



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1994

Mr. Fred Toler
Executive Director
Texas Commission on Law Enforcement
Officer Standards and Education
1033 La Posada, Suite 240
Austin, Texas 78752

OR94-376

Dear Mr. Toler:

The Texas Commission on Law Enforcement Officer Standards and Education (the "commission") received two requests for information under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ You have released most of the requested information, including a list of each officer who has ten or more appointments to Texas law enforcement agencies. The information at issue is the name of the law enforcement agencies to which each officer on that list has been appointed. You have not released this information because you say the retrieval of the information would require a major modification of the commission's computer software. You ask several questions in which you are essentially asking what the commission must do in order to comply with the Open Records Act. You raise no exception in the Open Records Act to the release of this information.²

You have informed the requestor that the commission has received informal bids for the computer programming required to retrieve the requested information. The

¹The Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the the Government Code at chapter 552. *Id.* § 1, at 599. This codification of the Open Records Act is a nonsubstantive revision. *Id.* § 47.

²We note that you have informed the requestor that the commission will make available to him a computer terminal so that he can manually compile the requested information. The Open Records Act permits a requestor-conducted search unless such a search would give the requestor access to information deemed confidential under the Open Records Act. *See Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Attorney General Opinion No. JM-672 (1987) at 6.

amount of these bids ranges from \$1200 to \$3000. The requestor must pay the cost of retrieving information maintained in computer record banks. See Attorney General Opinion JM-672 (1987). However, the commission must comply with the provisions of section 552.262 of the Government Code in determining the costs to charge for providing the requested information.

Section 552.262 of the Government Code provides as follows:

The charge for access to public records that are comprised in a form other than standard or smaller sized pages or that are in computer record banks, microfilm records, or other similar record keeping systems shall be set:

- (1) making every effort to match the charge with the actual cost of providing the record;
- (2) after consultation between a governmental body's officer for public records and the General Services Commission; and
- (3) in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead.

You ask whether the commission can refuse to provide the requested information since you say its preparation would be unduly costly and cause undue hardship to the commission. The commission cannot deny access to information because of the cost or method of supplying requested information. See *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). However, if the costs for the preparation of the requested information would be unduly costly and the preparation of the information would cause undue hardship to the commission if the costs were not paid, the commission may require a bond for payment of the costs or a cash prepayment of the anticipated costs. See Gov't Code § 552.263.³

You are correct in asserting that the Open Records Act does not require a governmental body to create new information. Open Records Decision No. 467 (1987) determined that the Open Records Act does not require a school district to create a list of duties neglected by an individual when no such list existed. Here, however, the

³Whether the preparation of the requested information would be unduly costly to the commission or cause undue hardship to the commission if the costs were not paid is a question of fact. This office cannot resolve such questions of fact in the opinion process. See Open Records Decision No. 426 (1985) at 5.

information exists in the commission's computer banks, but you say the retrieval of that information would require the preparation of a new computer program.

The Open Records Act does not require the preparation of an extensive new computer program to obtain particular sets of information. Attorney General Opinion JM-672 (1987) at 5. Whether the programming required to obtain particular information is "extensive" so as to constitute the creation of new material must be determined on a case-by-case basis. *Id.*

However, we do not think it is necessary for us to make that determination here. In this case, the commission seems willing to accommodate the requestor by either preparing a computer program designed to compile the requested information or by giving the requestor access to its computers. As mentioned above, the commission must determine the amount it will charge for providing the requested information in compliance with section 552.262 of the Government Code, including consultation with the General Services Commission.

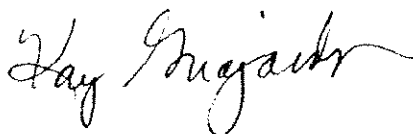
We also direct your attention to a new provision, section 9A of article 6252-17a, V.T.C.S., which applies to state agencies, such as the commission. See V.T.C.S. art. 6252-17a, § 9A (e) (defining "state agency" for purposes of section 9A). Subsection (b) of section 9A provides as follows:

Each agency by rule shall specify the charges the agency will make for copies of public records. A state agency may establish a charge for a copy of a public record that is equal to the full cost to the agency of providing the copy.

Additionally, pursuant to subsection (a) of section 9A of article 6252-17a, V.T.C.S., the General Services Commission has recently adopted rules that a state agency may use in determining the amount to charge for the cost of providing copies of or access to public information. See Gen. Servs. Comm'n, 19 Tex. Reg. 682-85, 2485-88 (1994) (to be codified at 1 T.A.C. 111.61 - .70).

If you have further questions, please contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

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Enclosures: Submitted documents

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